

Introduced by Senator Ducheny

February 24, 2006

An act to amend Section 65589.5 of the Government Code, and to amend Section 17021.6 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1802, as introduced, Ducheny. Farmworker housing.

(1) The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

This bill would revise the conditions upon which a disapproval or a conditional approval of the housing development project is based.

(2) The Employee Housing Act deems employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household, an agricultural land use for designated purposes.

This bill would revise this number to no more than 24 beds in a group quarters or 12 units or spaces, as specified above. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65589.5 of the Government Code is
2 amended to read:
3 65589.5. (a) The Legislature finds and declares all of the
4 following:
5 (1) The lack of housing is a critical problem that threatens the
6 economic, environmental, and social quality of life in California.
7 (2) California housing has become the most expensive in the
8 nation. The excessive cost of the state's housing supply is
9 partially caused by activities and policies of many local
10 governments that limit the approval of housing, increase the cost
11 of land for housing, and require that high fees and exactions be
12 paid by producers of housing.
13 (3) Among the consequences of those actions are
14 discrimination against low-income and minority households, lack
15 of housing to support employment growth, imbalance in jobs and
16 housing, reduced mobility, urban sprawl, excessive commuting,
17 and air quality deterioration.
18 (4) Many local governments do not give adequate attention to
19 the economic, environmental, and social costs of decisions that
20 result in disapproval of housing projects, reduction in density of
21 housing projects, and excessive standards for housing projects.
22 (b) It is the policy of the state that a local government not
23 reject or make infeasible housing developments that contribute to
24 meeting the housing need determined pursuant to this article
25 without a thorough analysis of the economic, social, and
26 environmental effects of the action and without complying with
27 subdivision (d).
28 (c) The Legislature also recognizes that premature and
29 unnecessary development of agricultural lands for urban uses
30 continues to have adverse effects on the availability of those
31 lands for food and fiber production and on the economy of the

1 state. Furthermore, it is the policy of the state that development
2 should be guided away from prime agricultural lands; therefore,
3 in implementing this section, local jurisdictions should
4 encourage, to the maximum extent practicable, in filling existing
5 urban areas.

6 (d) A local agency shall not disapprove a housing
7 development project, including farmworker housing as defined in
8 subdivision (d) of Section 50199.50 of the Health and Safety
9 Code, for very low, low-, or moderate-income households or
10 condition approval, including through the use of design review
11 standards, in a manner that renders the project infeasible for
12 development for the use of very low, low-, or moderate-income
13 households unless it makes written findings, based upon
14 substantial evidence in the record, as to one of the following:

15 (1) The jurisdiction has adopted a housing element pursuant to
16 this article that has been revised in accordance with Section
17 65588, is in substantial compliance with this article, and the
18 jurisdiction has met or exceeded its share of the regional housing
19 need allocation pursuant to Section 65584 for the planning period
20 for the income category proposed for the housing development
21 project, provided that any disapproval or conditional approval
22 shall not be based on any of the reasons prohibited by Section
23 65008. If the housing development project includes a mix of
24 income categories, and the jurisdiction has not met or exceeded
25 its share of the regional housing need for one or more of those
26 categories, then this paragraph shall not be used to disapprove or
27 conditionally approve the project. The share of the regional
28 housing need met by the jurisdiction shall be calculated
29 consistently with the forms and definitions that may be adopted
30 by the Department of Housing and Community Development
31 pursuant to Section 65400. Any disapproval or conditional
32 approval pursuant to this paragraph shall be in accordance with
33 applicable law, rule, or standards.

34 (2) The development project as proposed would have a
35 specific, adverse impact upon the public health or safety, and
36 there is no feasible method to satisfactorily mitigate or avoid the
37 specific adverse impact without rendering the development
38 unaffordable to low- and moderate-income households. As used
39 in this paragraph, a “specific, adverse impact” means a
40 significant, quantifiable, direct, and unavoidable impact, based

1 on objective, identified written public health or safety standards,
2 policies, or conditions as they existed on the date the application
3 was deemed complete. Inconsistency with the zoning ordinance
4 or general plan land use designation shall not constitute a
5 specific, adverse impact upon the public health or safety.

6 (3) The denial of the project or imposition of conditions is
7 required in order to comply with specific state or federal law, and
8 there is no feasible method to comply without rendering the
9 development unaffordable to low- and moderate-income
10 households.

11 (4) The development project is proposed on land zoned for
12 agriculture or resource preservation that is surrounded on at least
13 two sides by land being used for agricultural or resource
14 preservation purposes, or which does not have adequate water or
15 wastewater facilities to serve the project. *This paragraph cannot*
16 *be utilized to disapprove or conditionally approve a housing*
17 *development that will consist of housing for agricultural*
18 *employees, as defined in subdivision (b) of Section 1140.4 of the*
19 *Labor Code, that is developed on land zoned for agricultural use*
20 *pursuant to Section 21159.22 of the Public Resources Code, or*
21 *designated as an agricultural preserve pursuant to Section*
22 *51230.2.*

23 (5) The development project is inconsistent with both the
24 jurisdiction's zoning ordinance and general plan land use
25 designation as specified in any element of the general plan as it
26 existed on the date the application was deemed complete, and the
27 jurisdiction has adopted a revised housing element in accordance
28 with Section 65588 that is in substantial compliance with this
29 article.

30 (A) This paragraph cannot be utilized to disapprove or
31 conditionally approve a housing development project if the
32 development project is proposed on a site that is identified as
33 suitable or available for very low, low-, or moderate-income
34 households in the jurisdiction's housing element, and consistent
35 with the density specified in the housing element, even though it
36 is inconsistent with both the jurisdiction's zoning ordinance and
37 general plan land use designation.

38 (B) If the local agency has failed, in accordance with Section
39 65583.2, to identify in the inventory of land in its housing
40 element sites that can be developed for housing within the

1 planning period and that are sufficient to provide for the
2 jurisdiction's share of the regional housing need for all income
3 levels pursuant to Section 65584, then this paragraph shall not be
4 utilized to disapprove or conditionally approve a housing
5 development project proposed for a site designated in any
6 element of the general plan for residential uses or designated in
7 any element of the general plan for commercial uses if residential
8 uses are permitted or conditionally permitted within commercial
9 designations. In any action in court, the burden of proof shall be
10 on the local agency to show that its housing element does
11 identify adequate sites with appropriate zoning and development
12 standards and with services and facilities to accommodate the
13 local agency's share of the regional housing need for the very
14 low and low-income categories.

15 *(C) This paragraph cannot be utilized to disapprove or*
16 *conditionally approve a housing development that will consist of*
17 *housing for agricultural employees, as defined in subdivision (b)*
18 *of Section 1140.4 of the Labor Code, that is developed on land*
19 *zoned for agricultural use pursuant to Section 21159.22 of the*
20 *Public Resources Code, or designated as an agricultural*
21 *preserve pursuant to Section 51230.2.*

22 ~~(e) Nothing in this section shall be construed to~~ *This section*
23 *does not* relieve the local agency from complying with the
24 Congestion Management Program required by Chapter 2.6
25 (commencing with Section 65088) of Division 1 of Title 7 or the
26 California Coastal Act (Division 20 (commencing with Section
27 30000) of the Public Resources Code). ~~Neither shall anything in~~
28 ~~this section be construed to~~ *This section also does not* relieve the
29 local agency from making one or more of the findings required
30 pursuant to Section 21081 of the Public Resources Code or
31 otherwise complying with the California Environmental Quality
32 Act (Division 13 (commencing with Section 21000) of the Public
33 Resources Code).

34 ~~(f) Nothing in this section shall be construed to~~ *This section*
35 *does not* prohibit a local agency from requiring the development
36 project to comply with objective, quantifiable, written
37 development standards, conditions, and policies appropriate to,
38 and consistent with, meeting the jurisdiction's share of the
39 regional housing need pursuant to Section 65584. However, the
40 development standards, conditions, and policies shall be applied

1 to facilitate and accommodate development at the density
2 permitted on the site and proposed by the development project.
3 ~~Nothing in this section shall be construed to~~ *This section does not*
4 prohibit a local agency from imposing fees and other exactions
5 otherwise authorized by law that are essential to provide
6 necessary public services and facilities to the development
7 project.

8 (g) This section shall be applicable to charter cities because
9 the Legislature finds that the lack of housing is a critical
10 statewide problem.

11 (h) The following definitions apply for the purposes of this
12 section:

13 (1) “Feasible” means capable of being accomplished in a
14 successful manner within a reasonable period of time, taking into
15 account economic, environmental, social, and technological
16 factors.

17 (2) “Housing development project” means a use consisting of
18 either of the following:

19 (A) Residential units only.

20 (B) Mixed-use developments consisting of residential and
21 nonresidential uses in which nonresidential uses are limited to
22 neighborhood commercial uses and to the first floor of buildings
23 that are two or more stories. As used in this paragraph,
24 “neighborhood commercial” means small-scale general or
25 specialty stores that furnish goods and services primarily to
26 residents of the neighborhood.

27 (3) “Housing for very low, low-, or moderate-income
28 households” means that either (A) at least 20 percent of the total
29 units shall be sold or rented to lower income households, as
30 defined in Section 50079.5 of the Health and Safety Code, or (B)
31 100 percent of the units shall be sold or rented to
32 moderate-income households as defined in Section 50093 of the
33 Health and Safety Code, or middle-income households, as
34 defined in Section 65008 of this code. Housing units targeted for
35 lower income households shall be made available at a monthly
36 housing cost that does not exceed 30 percent of 60 percent of
37 area median income with adjustments for household size made in
38 accordance with the adjustment factors on which the lower
39 income eligibility limits are based. Housing units targeted for
40 persons and families of moderate income shall be made available

1 at a monthly housing cost that does not exceed 30 percent of 100
2 percent of area median income with adjustments for household
3 size made in accordance with the adjustment factors on which the
4 moderate income eligibility limits are based.

5 (4) “Area median income” means area median income as
6 periodically established by the Department of Housing and
7 Community Development pursuant to Section 50093 of the
8 Health and Safety Code. The developer shall provide sufficient
9 legal commitments to ensure continued availability of units for
10 very low or low-income households in accordance with the
11 provisions of this subdivision for 30 years.

12 (5) “Neighborhood” means a planning area commonly
13 identified in a community’s planning documents, and identified
14 as a neighborhood by the individuals residing and working within
15 the neighborhood. Documentation demonstrating that the area
16 meets the definition of neighborhood may include a map
17 prepared for planning purposes which lists the name and
18 boundaries of the neighborhood.

19 (6) “Disapprove the development project” includes any
20 instance in which a local agency does either of the following:

21 (A) Votes on a proposed housing development project
22 application and the application is disapproved.

23 (B) Fails to comply with the time periods specified in
24 subparagraph (B) of paragraph (1) of subdivision (a) of Section
25 65950. An extension of time pursuant to Article 5 (commencing
26 with Section 65950) shall be deemed to be an extension of time
27 pursuant to this paragraph.

28 (i) If any city, county, or city and county denies approval or
29 imposes restrictions, including design changes, a reduction of
30 allowable densities or the percentage of a lot that may be
31 occupied by a building or structure under the applicable planning
32 and zoning in force at the time the application is deemed
33 complete pursuant to Section 65943, that have a substantial
34 adverse effect on the viability or affordability of a housing
35 development for very low, low-, or moderate-income households,
36 and the denial of the development or the imposition of
37 restrictions on the development is the subject of a court action
38 which challenges the denial, then the burden of proof shall be on
39 the local legislative body to show that its decision is consistent

1 with the findings as described in subdivision (d) and that the
2 findings are supported by substantial evidence in the record.

3 (j) When a proposed housing development project complies
4 with applicable, objective general plan and zoning standards and
5 criteria, including design review standards, in effect at the time
6 that the housing development project's application is determined
7 to be complete, but the local agency proposes to disapprove the
8 project or to approve it upon the condition that the project be
9 developed at a lower density, the local agency shall base its
10 decision regarding the proposed housing development project
11 upon written findings supported by substantial evidence on the
12 record that both of the following conditions exist:

13 (1) The housing development project would have a specific,
14 adverse impact upon the public health or safety unless the project
15 is disapproved or approved upon the condition that the project be
16 developed at a lower density. As used in this paragraph, a
17 "specific, adverse impact" means a significant, quantifiable,
18 direct, and unavoidable impact, based on objective, identified
19 written public health or safety standards, policies, or conditions
20 as they existed on the date the application was deemed complete.

21 (2) There is no feasible method to satisfactorily mitigate or
22 avoid the adverse impact identified pursuant to paragraph (1),
23 other than the disapproval of the housing development project or
24 the approval of the project upon the condition that it be
25 developed at a lower density.

26 (k) The applicant or any person who would be eligible to
27 apply for residency in the development may bring an action to
28 enforce this section. If in any action brought to enforce the
29 provisions of this section, a court finds that the local agency
30 disapproved a project or conditioned its approval in a manner
31 rendering it infeasible for the development of housing for very
32 low, low-, or moderate-income households, including
33 farmworker housing, without making the findings required by
34 this section or without making sufficient findings supported by
35 substantial evidence, the court shall issue an order or judgment
36 compelling compliance with this section within 60 days,
37 including, but not limited to, an order that the local agency take
38 action on the development project. The court shall retain
39 jurisdiction to ensure that its order or judgment is carried out and
40 shall award reasonable attorney's fees and costs of suit to the

1 plaintiff or petitioner who proposed the housing development,
2 except under extraordinary circumstances in which the court
3 finds that awarding fees would not further the purposes of this
4 section. If the court determines that its order or judgment has not
5 been carried out within 60 days, the court may issue further
6 orders as provided by law to ensure that the purposes and policies
7 of this section are fulfilled, including, but not limited to, an order
8 to vacate the decision of the local agency, in which case the
9 application for the project, as constituted at the time the local
10 agency took the initial action determined to be in violation of this
11 section, along with any standard conditions determined by the
12 court to be generally imposed by the local agency on similar
13 projects, shall be deemed approved unless the applicant consents
14 to a different decision or action by the local agency.

15 (l) If the court finds that the local agency (1) acted in bad faith
16 when it disapproved or conditionally approved the housing
17 development in violation of this section and (2) failed to carry
18 out the court's order or judgment within 60 days as described in
19 paragraph (k), the court in addition to any other remedies
20 provided by this section, may impose fines upon the local agency
21 that the local agency shall be required to deposit into a housing
22 trust fund. Fines shall not be paid from funds that are already
23 dedicated for affordable housing, including, but not limited to,
24 redevelopment or low- and moderate-income housing funds and
25 federal HOME and CDBG funds. The local agency shall commit
26 the money in the trust fund within five years for the sole purpose
27 of financing newly constructed housing units affordable to
28 extremely low, very low, or low-income households. For
29 purposes of this section, "bad faith" shall mean an action that is
30 frivolous or otherwise entirely without merit.

31 (m) Any action brought to enforce the provisions of this
32 section shall be brought pursuant to Section 1094.5 of the Code
33 of Civil Procedure, and the local agency shall prepare and certify
34 the record of proceedings in accordance with subdivision (c) of
35 Section 1094.6 of the Code of Civil Procedure no later than 30
36 days after the petition is served, provided that the cost of
37 preparation of the record shall be borne by the local agency.
38 Upon entry of the trial court's order, a party shall, in order to
39 obtain appellate review of the order, file a petition within 20 days
40 after service upon it of a written notice of the entry of the order,

1 or within such further time not exceeding an additional 20 days
2 as the trial court may for good cause allow. If the local agency
3 appeals the judgment of the trial court, the local agency shall post
4 a bond, in an amount to be determined by the court, to the benefit
5 of the plaintiff if the plaintiff is the project applicant.

6 (n) In any action, the record of the proceedings before the
7 local agency shall be filed as expeditiously as possible and,
8 notwithstanding Section 1094.6 of the Code of Civil Procedure
9 or subdivision (m) of this section, all or part of the record may be
10 prepared (1) by the petitioner with the petition or petitioner's
11 points and authorities, (2) by the respondent with respondent's
12 points and authorities, (3) after payment of costs by the
13 petitioner, or (4) as otherwise directed by the court. If the
14 expense of preparing the record has been borne by the petitioner
15 and the petitioner is the prevailing party, the expense shall be
16 taxable as costs.

17 SEC. 2. Section 17021.6 of the Health and Safety Code is
18 amended to read:

19 17021.6. (a) The owner of any employee housing who has
20 qualified or intends to qualify for a permit to operate pursuant to
21 this part may invoke this section.

22 (b) Any employee housing consisting of no more than ~~12~~ 24
23 beds in a group quarters or 12 units or spaces designed for use by
24 a single family or household shall be deemed an agricultural land
25 use designation for the purposes of this section. For the purpose
26 of all local ordinances, employee housing shall not be deemed a
27 use that implies that the employee housing is an activity that
28 differs in any other way from an agricultural use. No conditional
29 use permit, zoning variance, or other zoning clearance shall be
30 required of this employee housing that is not required of any
31 other agricultural activity in the same zone. The permitted
32 occupancy in employee housing in an agricultural zone shall
33 include agricultural employees who do not work on the property
34 where the employee housing is located.

35 (c) Except as otherwise provided in this part, employee
36 housing consisting of no more than ~~12~~ 24 beds in a group
37 quarters or 12 units or spaces designed for use by a single family
38 or household shall not be subject to any business taxes, local
39 registration fees, use permit fees, or other fees to which other
40 agricultural activities in the same zone are not likewise subject.

1 ~~Nothing in this subdivision shall be construed to~~ *This subdivision*
2 *does not* forbid the imposition of local property taxes, fees for
3 water services and garbage collection, fees for normal
4 inspections, local bond assessments, and other fees, charges, and
5 assessments to which other agricultural activities in the same
6 zone are likewise subject. Neither the State Fire Marshal nor any
7 local public entity shall charge any fee to the owner, operator, or
8 any resident for enforcing fire inspection regulation pursuant to
9 state law or regulation or local ordinance, with respect to
10 employee housing that serves ~~12~~ 24 or fewer persons.

11 (d) For the purposes of any contract, deed, or covenant for the
12 transfer of real property, employee housing consisting of no more
13 than ~~12~~ 24 beds in a group quarters or 12 units or spaces
14 designed for use by a single family or household shall be
15 considered an agricultural use of property, notwithstanding any
16 disclaimers to the contrary. For purposes of this section,
17 “employee housing” includes employee housing defined in
18 subdivision (b) of Section 17008, even if the housing
19 accommodations or property are not located in a rural area, as
20 defined by Section 50101.

21 (e) The Legislature hereby declares that it is the policy of this
22 state that each county and city shall permit and encourage the
23 development and use of sufficient numbers and types of
24 employee housing facilities as are commensurate with local need.
25 This section shall apply equally to any charter city, general law
26 city, county, city and county, district, and any other local public
27 entity.

28 (f) If any owner who invokes the provisions of this section
29 fails to maintain a permit to operate pursuant to this part
30 throughout the first 10 consecutive years following the issuance
31 of the original certificate of occupancy, both of the following
32 shall occur:

33 (1) The enforcement agency shall notify the appropriate local
34 government entity.

35 (2) The public agency that has waived any taxes, fees,
36 assessments, or charges for employee housing pursuant to this
37 section may recover the amount of those taxes, fees, assessments,
38 or charges from the landowner, less 10 percent of that amount for
39 each year that a valid permit has been maintained.

1 (g) Subdivision (f) shall not apply to an owner of any
2 prospective, planned, or unfinished employee housing facility
3 who has applied to the appropriate state and local public entities
4 for a permit to construct or operate pursuant to this part prior to
5 January 1, 1996.

6 SEC. 3. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.